

Mail Stop: APPEAL BRIEF - PATENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450



In re application of: Detlef RENNER
Serial No.: 10/554,003
Filed: October 21, 2005 as national phase of Int. Patent Application Serial No. PCT/DE2004/000652,
filed March 29, 2006
For: DEVICE AND METHOD FOR DISPLAYING GAS TURBINE MODULES, ESPECIALLY
DURING MAINTENANCE
S i r:

Transmitted herewith is a **APPELLANTS' BRIEF UNDER 37 C.F.R. § 41.37 (14 pages)** in the above-identified application.

- [X] Also transmitted herewith are:
[] Petition for extension under 37 C.F.R. 1.136
[X] Other: Return Receipt Postcard
- [X] Check(s) in the amount of **\$510.00** is attached to cover:
[] Filing fee for additional claims under 37 C.F.R. 1.16
[] Petition fee for extension under 37 C.F.R. 1.136
[X] Other: Fee for filing an Appeal Brief
- [X] The Assistant Commissioner is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 50-0552.
- [X] Any filing fee under 37 C.F.R. 1.16 for the presentation of additional claims which are not paid by check submitted herewith.
- [X] Any patent application processing fees under 37 C.F.R. 1.17.
- [X] Any petition fees for extension under 37 C.F.R. 1.136 which are not paid by check submitted herewith, and it is hereby requested that this be a petition for an automatic extension of time under 37 CFR 1.136.


William C. Gehris, Reg. No. 38,156
DAVIDSON, DAVIDSON & KAPPEL, LLC
485 Seventh Avenue, 14th Floor
New York, New York 10018
Tel: (212) 736-1940
Fax: (212) 736-2427

I hereby certify that the documents referred to as attached therein and/or fee are being deposited with the United States Postal Service as "first class mail" with sufficient postage in an envelope addressed to "Mail Stop: APPEAL BRIEF - PATENT Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" on March 28, 2008.

DAVIDSON, DAVIDSON & KAPPEL, LLC

BY: 

Danielle C. Sullivan



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Re: Application of: Detlef RENNER, et al.
Serial No.: 10/554,003
Filed: January 12, 2006
For: DEVICE AND METHOD FOR DISPLACING GAS
TURBINES, ESPECIALLY DURING MAINTENANCE
Art Unit: 3651
Examiner: Douglas A. Hess

Mail Stop: APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

March 28, 2008

APPELLANTS' BRIEF UNDER 37 C.F.R. § 41.37

Sir:

Appellants submit this brief for the consideration of the Board of Patent Appeals and Interferences (the "Board") in support of their appeal of the Advisory Action dated December 11, 2007 and the Final Rejection dated August 29, 2007 in this application. The statutory fee of \$510.00 is submitted concurrently herewith. If any additional fees are deemed to be due at this time, the Assistant Commissioner is authorized to charge payment of the same to Deposit Account No. 50-0552.

04/01/2008 CCHAU1 00000021 10554003

01 FC:1402

510.00 OP

1. REAL PARTY IN INTEREST

The real party in interest is MTU Aero Engines GmbH, a German corporation having a place of business in Muenchen, Germany, and the assignee of the entire right, title and interest in the above-identified patent application. The invention was assigned to MTU Aero Engines GmbH by an assignment originating from inventor Detlef Renner. The most recent conveyance was recorded on June 14, 2006 at reel 017792, frame 0891.

2. RELATED APPEALS AND INTERFERENCES

Appellants, their legal representatives, and assignee are not aware of any appeal or interference that directly affects, will be directly affected by, or will have a bearing on the Board's decision in this appeal.

3. STATUS OF CLAIMS

Claims 17 to 35 are pending. Claims 1 to 16 have been canceled without prejudice. Claims 26 and 27 have been allowed. Claims 17 to 25 and 28 to 35 have been finally rejected as per the Final Office Action dated August 29, 2007.

The rejection to claims 17 to 25 and 28 to 35 thus is appealed. A copy of appealed claims 17 to 25 and 28 to 35 is attached hereto as Appendix A.

4. STATUS OF AMENDMENTS

In response to the Final Office Action dated August 29, 2007, no amendments have been made.

A Notice of Appeal was filed on January 28, 2008, and received by the U.S.P.T.O. on January 31, 2008.

5. SUMMARY OF THE CLAIMED SUBJECT MATTER

Independent claim 17 recites a device for displacing gas turbines or gas turbine modules (for example, page 2, paragraph [0006], line 2 to 3), comprising a gas turbine conveying device, (for example, conveying devices 15, 16 in Figures 1, 2 and 3; for example, page 2, paragraph

[0007], line 1 to 6) the conveying device being raisable to a raised state and lowerable to a lowered state (for example, conveying device 15, 16 in Figures 2 and 3; for example, page 5, paragraph [0025], line 4), the conveying device configured to support and move a gas turbine or gas turbine module when the conveying device is in the raised state (for example, conveying devices 15, 16 and props 12 in Figure 1; for example, page 4, paragraph [0024], lines 3 to 5 and page 5, paragraph [0025], lines 7 and 8).

Independent claim 25 recites a device for displacing gas turbines or gas turbine modules (for example, page 2, paragraph [0006], line 2 to 3), comprising: a gas turbine conveying device (for example, conveying devices 15, 16 in Figures 1, 1 and 2; for example, page 2, paragraph [0007], line 1 to 6); a holding device for supporting a gas turbine or gas turbine module (for example, holding device 37 in Figures 4, 5 and 6), the holding device cooperating with the conveying device such that the holding device, and the gas turbine or gas turbine module supported thereon, are movable by moving the conveying device (for example, holding device 37 and conveying device 34 in Figures 4, 5 and 6; for example, page 8, paragraph [0036], lines 1 to 6).

Independent claim 34 recites a method for displacing gas turbines or gas turbine modules, comprising the steps of: raising a conveying device into a raised state such that a gas turbine or gas turbine module to be moved is raised (for example, page 6, paragraph [0029], lines 4 to 7), and moving the conveying device such that the gas turbine or gas turbine module is moved (for example, page 6, paragraph [0030], lines 3 to 5).

Independent claim 35 recites a method for displacing gas turbines or gas turbine modules, comprising supporting a gas turbine or gas turbine module to be moved on a holding device (for example, page 8, paragraph [0036], lines 1 to 6); moving the holding device and the gas turbine or gas turbine module by moving a conveying device which is cooperatively engaged with the holding device (for example, page 8, paragraph [0036], lines 1 to 6).

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 17, 18, 20 to 25, 28 to 32, 34 and 35 were rejected under 35 U.S.C. §102(b) as being anticipated by Shyr et al. (U.S. 5,743,375). Claims 19 and 33 were rejected under 35 U.S.C. §103(a) as being unpatentable over Shyr et al. (U.S. 5,743,375).

7. ARGUMENTS

35 U.S.C. §102 Rejections

Claims 17, 18, 20 to 25, 28 to 32, 34 and 35 were rejected under 35 U.S.C. §102(b) as being anticipated by Shyr et al. (U.S. 5,743,375).

Shyr discloses a conveyor transfer apparatus.

Shyr fails to teach or show “a device for displacing gas turbines or gas turbine modules,” or the structural element “a gas turbine conveying device,” as recited in claim 17 and 25.

Anticipation requires that every element of a claim be met: see MPEP 2131. The present claim is not merely claiming any conveying device capable of conveying a gas turbine, but rather a gas turbine conveyor, which is a specific type of conveyor in the gas turbine art. Many conveyors are particular structures known by the things they convey: luggage conveyors, newspaper conveyors, etc. are all known different structures, just as CD players, cassette tape players, etc are different structures, even if known by what they play. A gas turbine conveyor is how the art calls these structures, and the use of such combinations of words to connote structure in the art is common.

It is clear that Shyr does not disclose a gas turbine conveyor as claimed.

In addition to the fact that Shyr is not a gas turbine conveyor as that structure is known in the art, it also is clear that conveyor of Shyr is not capable of conveying any kind of gas turbine as one of skill in the art understands a gas turbine reading the present specification.

Moreover, the grounds for rejection “one of ordinary skill in the art *could* construe the device of Shyr et al. is capable of conveying a gas turbine” is not the standard for anticipation. See MPEP 2131.

If an obviousness rejection is being made, applicant respectfully requests a new office action setting forth the proper reasons.

Claim 23 Argued Separately

Claim 23 recites, “wherein the conveying device is raised and lowered pneumatically.” The asserted “pneumatic raising and lowering lifting device” element 91 is not discussed in Shyr nor is there any disclosure of the conveying device being raised and lowered pneumatically. It is respectfully requested that the Examiner point out such disclosure.

Withdrawal of the 35 U.S.C. 102(b) rejections to 23 is respectfully requested.

Claim 30 Argued Separately

Claim 30 recites “further comprising a lifting device, the lifting device configured to raise and lower the gas turbine or gas turbine module to be moved, when the conveying device is immobilized.”

Shyr fails to teach or show “the lifting device configured to raise and lower the gas turbine or gas turbine module to be moved, when the conveying device is immobilized,” as recited in claim 30, and the Office Action fails to address this claim limitation at all.

Withdrawal of the 35 U.S.C. 102(b) rejections to claims 30 is respectfully requested.

Claim 31 Argued Separately

Claim 31 recites “wherein the lifting device is configured to raise and lower the holding device as well as the gas turbine or gas turbine module to be moved, when the conveying device is immobilized.”

Shyr fails to teach or show “the lifting device is configured to raise and lower the holding device as well as the gas turbine or gas turbine module to be moved, when the conveying device is immobilized,” as recited in claim 31, and the Office Action fails to address this claim limitation at all.

Withdrawal of the 35 U.S.C. 102(b) rejections to claims 31 is respectfully requested.

Claim 32 Argued Separately

Claim 32 recites “wherein a respective lifting device is situated in an area of each workstation.”

Shyr fails to teach or show “lifting device is situated in an area of each workstation,” as

recited in claim 32. The Office Action asserts “inherent workstations.” In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flows from the teachings of the applied prior art.” (See MPEP 2112.IV). The examiner has failed to provide such reasoning.

Claims 34 and 35: Argued Separately

In addition with regard to claims 34 and 35, no method for moving or raising a gas turbine or gas turbine module is shown or disclosed in Shyr.

With respect to claims 34 and 35, a gas turbine is positively recited: the method requires actual movement of a gas turbine: “a gas turbine ... is raised” (claim 34) and “moving ... the gas turbine or gas turbine module” (claim 35). Where is a gas turbine moved in Shyr?

There clearly is no anticipation of these claims, as Shyr admittedly does not disclose moving a gas turbine or turbine module as all. See MPEP 2131.

Withdrawal of the 35 U.S.C. 102(b) rejections to claims 34 and 35 is respectfully requested.

Rejections under 35 U.S.C. 103(a)

Claims 19 and 33 were rejected under 35 U.S.C. 103(a) as being unpatentable over Shyr et al. (US 5,743,375).

In view of the above, withdrawal of the rejection to claims 19 and 33 is respectfully requested.

Claim 19 Argued Separately

Furthermore, in regards to claim 19 it would not have been obvious to one of skill in the art to have the conveying device of Shyr “integrated into a floor of a workshop.” The conveying device of Shyr may not fit in the floor of a workshop.

Withdrawal of the 35 U.S.C. 103(a) rejections to claims 19 is respectfully requested.

Claim 33 Argued Separately

Furthermore in regards to claim 33, the Office Action admits that Shyr fails to teach or show “wherein the conveying device is raised and lowered hydraulically,” as recited in claim 33.

It would not have been obvious to one of skill in the art to use a hydraulic lifting device based on design and space parameters for the device.

Withdrawal of the 35 U.S.C. 103(a) rejections to claims 33 is respectfully requested.

CONCLUSION

It is respectfully submitted that the application is in condition for allowance. Favorable consideration of this appeal brief is respectfully requested.

Respectfully submitted,

DAVIDSON, DAVIDSON & KAPPEL, LLC

By: _____

William C. Gehris, Reg. No. 38,156

DAVIDSON, DAVIDSON & KAPPEL, LLC
485 Seventh Avenue, 14th Floor
New York, NY 10018
Tel: (212) 736-1940
Fax: (212) 736-2427

APPENDIX A:

PENDING CLAIMS 17 to 25 and 28 to 35 OF U.S.

APPLICATION SERIAL NO. 10/554,003

Claim 17 (previously presented): A device for displacing gas turbines or gas turbine modules, comprising a gas turbine conveying device, the conveying device being raisable to a raised state and lowerable to a lowered state, the conveying device configured to support and move a gas turbine or gas turbine module when the conveying device is in the raised state.-

Claim 18 (previously presented): The device as recited in claim 17, wherein the device includes a plurality of conveying devices, each conveying device configured to support a respective gas turbine or gas turbine module.

Claim 19 (previously presented): The device as recited in Claim 17, wherein the conveying device is integrated into a floor of a workshop, and at least a portion of the conveying device protrudes over a plane defined by the floor in the raised state.

Claim 20 (previously presented): The device as recited in Claim 17, wherein the conveying device includes a chain conveyor.

Claim 21 (previously presented): The device as recited in Claim 17, wherein, in the raised state, the conveying device raises, over the floor, the gas turbine or turbine module to be moved,

and the gas turbine or turbine module to be moved is movable through a plurality of consecutive work stations via the conveying device.

Claim 22 (previously presented): The device as recited in Claim 17, wherein the conveying device includes two approximately parallel conveying devices, the gas turbine or gas turbine module to be moved being movable when both conveying devices are raised and moved.

Claim 23 (previously presented): The device as recited Claims 17, wherein the conveying device is raised and lowered pneumatically.

Claim 24 (previously presented): The device as recited in Claim 17, wherein the conveying device moves the gas turbine or gas turbine module in a cycle through consecutive work stations.

Claim 25 (previously presented): A device for displacing gas turbines or gas turbine modules, comprising:

a gas turbine conveying device;

a holding device for supporting a gas turbine or gas turbine module, the holding device cooperating with the conveying device such that the holding device, and the gas turbine or gas turbine module supported thereon, are movable by moving the conveying device.

Claim 28 (previously presented): The device as recited in Claim 25, wherein the conveying device moves the gas turbine or gas turbine module to be moved in a cycle through consecutive work stations.

Claim 29 (previously presented): The device as recited in Claim 25, wherein the conveying device includes a chain conveyor.

Claim 30 (previously presented): The device as recited in Claim 25, further comprising a lifting device, the lifting device configured to raise and lower the gas turbine or gas turbine module to be moved, when the conveying device is immobilized.

Claim 31 (previously presented): The device as recited in claim 30, wherein the lifting device is configured to raise and lower the holding device as well as the gas turbine or gas turbine module to be moved, when the conveying device is immobilized

Claim 32 (previously presented): The device as recited in Claim 30, wherein a respective lifting device is situated in the area of each work station.

Claim 33 (previously presented): The device as recited in Claim 30, wherein the conveying device is raised and lowered hydraulically.

Claim 34 (previously presented): A method for displacing gas turbines or gas turbine modules, comprising the steps of:

raising a conveying device into a raised state such that a gas turbine or gas turbine module to be moved is raised, and

moving the conveying device such that the gas turbine or gas turbine module is moved.

Claim 35 (previously presented): A method for displacing gas turbines or gas turbine modules, comprising

supporting a gas turbine or gas turbine module to be moved on a holding device;

moving the holding device and the gas turbine or gas turbine module by moving a conveying device which is cooperatively engaged with the holding device.

APPENDIX B

Evidence Appendix under 37 C.F.R. §41.37(c)(ix):

No evidence pursuant to 37 C.F.R. §§1.130, 1.131 or 1.132 and relied upon in the appeal has been submitted by appellants or entered by the examiner.

APPENDIX C

Related proceedings appendix under 37 C.F.R. §41.37(c)(x):

As stated in “2. RELATED APPEALS AND INTERFERENCES” of this appeal brief, appellants, their legal representatives, and assignee are not aware of any appeal or interference that directly affects, will be directly affected by, or will have a bearing on the Board's decision in this appeal.